

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

BRIAN CLESI and ELISE CLESI,)	
Individually and as the parent and)	
natural guardian of E.F.,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:18-cv-124
)	Judge Phillips
JAMES CHURCHILL DRAVLAND,)	
)	
Defendant.)	

MEMORANDUM OPINION

This civil action is before the Court on the parties’ Joint Motion of Remand [Doc. 13]. Plaintiffs filed this action in the Circuit Court for Hamilton County, Tennessee, on May 11, 2018 against defendants James Dravland and Volkswagen Group of America Chattanooga Operations, LLC (hereinafter “Volkswagen”), for claims arising from an automobile accident [Doc. 1-2]. Defendant Volkswagen removed the case to this Court on June 11, 2018, based on diversity jurisdiction, 28 U.S.C. §§ 1332, 1441 [Doc. 1]. Subsequent to removal, defendant Volkswagen was dismissed by stipulation and defendant Dravland is the only remaining defendant [Doc. 11].

Although the notice of removal was purportedly filed by both defendants, the instant motion disputes that defendant Dravland consented to removal [*see* Doc. 13 at p. 2]. Further, defendant Dravland states that he was served with process on June 11, 2018, the

same day on which the case was removed.¹ Thus, because he did not consent to removal, defendant Dravland argues that remand is appropriate. Further, both parties assert that they “prefer to litigate this case in state court” [*Id.* at p. 3].

The procedure for removal requires “all defendants who have been properly joined and served must join in or consent to the removal of the action.” 28 U.S.C. § 1446(b)(2)(A). As the parties note, this “rule of unanimity” has been interpreted to require that “all defendants in the action must join in the removal petition or file their consent to removal.” *Loftis v. United Parcel Serv., Inc.*, 342 F.3d 509, 516 (6th Cir. 2003). If all defendants do not join or consent, the case should not be removed. *Id.* Accepting defense counsel’s representation that defendant Dravland did not consent to removal, this case should not have been removed to this Court.

A motion to remand a case to state court pursuant to 28 U.S.C. § 1447(c) “on the basis of any defect” in the removal procedure other than the absence of subject matter jurisdiction must be filed within 30 days of removal. The instant motion was filed on August 13, 2018, more than 30 days after removal and more than 30 days after defendant Dravland was served. However, as the parties note, an error in removal procedure brought the case here; a failure to promptly move for remand should not keep it here. The Court agrees that the interests of justice support the remand requested by both remaining parties.

¹The Court notes that there is no evidence of service upon defendant Dravland in the record and no appearance for defendant Dravland has been filed prior to the instant motion. The Court also notes that these representations by defendant Dravland are made without any supporting affidavit.

Accordingly, the parties' joint motion of remand [Doc. 13] will be **GRANTED**. An appropriate order will be entered.

s/ Thomas W. Phillips
SENIOR UNITED STATES DISTRICT JUDGE